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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,296	03/17/2004	Burkhard Stock	71226	3608
23872	7590	09/01/2005	EXAMINER	
MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227			NATNITHITHADHA, NAVIN	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/802,296	Applicant(s) STOCK ET AL.	
	Examiner Navin Natnithadha	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 17 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03172004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claims 3 and 10 are objected to because of the following informalities:

It is not clear as to what is meant by "wherein the alcohol measuring device has a parallelepipedic form and said mouthpiece is received in said holder extending in parallel to one of two shorter end faces of the parallelepipedic breath alcohol measuring device". According to The American Heritage Dictionary, Second College Edition, "parallelepiped" defined as "a solid with six faces, each a parallelogram." Where are the six parallelogram faces? The specification does not contain support for the terms "parallelepipedic" or "parallelogram". It appears the Applicant is attempting to claim two parallel faces of the holder 6. The Examiner suggest amending the claim using language consistent with the Specification in order to clearly define the subject matter of the claimed invention. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault et al, US 6,468,222 B1, in view of Wright et al, US 4,297,871 A.

Claim 1: Mault teaches a breath measuring device (see figs. 3 and 8), comprising:
a "holder" (main housing member) 66; and
a "mouthpiece" (disposable portion with mouthpiece 20) 22 designed as a "pressure tube" (tube) 36 with a "hole" (outlet portion of tube 36) for sampling breathing gas for a breath sensor (oxygen sensor) 84, the "mouthpiece" 22 having a "trapezoidal cross section" (outer shell) 34, which is "complementary to a corresponding negative shape" (recess) 26 in the holder 66 for a "flush mounting" of the mouthpiece 22.

According to www.dictionary.com, "trapezoidal" is defined as "adj: resembling a trapezoid" and "trapezoid" is defined as "n: A quadrilateral having two parallel sides".

As can be seen in Figures 3 and 8, the cross sectional shape of the disposable portion 22 resembles a trapezoid.

Mault does not teach a "breath alcohol measuring device" and a mouthpiece 22 "for an alcohol sensor". However, Wright teaches a "breath alcohol measuring device" (see fig. 1), comprising: a "mouthpiece" (replaceable plastics breathing tube) 12 (see col. 2, lines 40-41); and an "alcohol sensor" (electrodes, or detector means for indicating the quantity of alcohol per unit volume of the sample) 17, 18 (see col. 2, lines 42-55). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Mault's device to be used as a breath alcohol measuring device because Mault discloses that the "present invention may include other sensors or physiological monitors" (see Mault, col. 32, lines 30-31), therefore suggesting the Mault device is capable of including an alcohol sensor.

Claim 2: Mault teaches the trapezoidal cross section 34 of mouthpiece 22 is "equilateral" (see fig. 3). The American Heritage Dictionary Second College Edition, defines "equilateral" as "2. A geometric figure having equal sides." In Figure 2 of the Applicants' disclosure, it appears that the "equilateral" sides are the left and right sides of the trapezoidal cross section. In Figure 3 of Mault, the "equilateral" sides are the side arrow 34 is pointing and the corresponding side opposite the arrow (left and right sides of the cross section of outer shell 34). Mault does not teach the hole (outlet portion of tube 36) for taking a breath sample is located in a shorter of two parallel sides of the

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cross section (top and bottom sides of the cross section of outer shell 34) of the mouthpiece 22. However, Wright teaches a "hole" 13 for taking a breath sample (see fig. 1) is located in a bottom side of the cross section of the replaceable mouthpiece 12. The bottom side of Wright corresponds to the bottom side of the cross section of Mault's outer shell 34. Therefore, it would have been obvious for one of ordinary skill in the art to modify the structure of Mault's device to incorporate an outlet hole in the bottom side of the cross section of outer shell 34 because Mault suggests the orientation of the mouthpiece 22 (as shown in Figure 3) could be described in "other positions" (see Mault, col. 4, lines 35-45).

Claim 3: Mault teaches device (see figs. 3 and 8) has a recess 26 shaped to hold the mouthpiece having two parallel faces (not labeled).

Claims 4 and 5: Mault teaches a "stop" or a "positioning pin" (engagement rails) 50 (see fig. 3) for positioning the holder in correct alignment.

Claim 6: Mault does not teach an "electrochemical alcohol sensor in flow" and a "pump, wherein the breathing gas is sampled by means of a sampling stroke of said pump, said pump being arranged downstream of said electrochemical alcohol sensor with the breathing gas being drawn through said electrochemical alcohol sensor."

However, Wright teaches "electrochemical alcohol sensors" (electrodes for indicating the quantity of alcohol per unit volume of the breath sample) 17, 18 (see col. 2, lines 43-52) and a "pump" (movable piston) 30 located downstream of the alcohol sensors 17, 18 and providing suction to sample the breathing gas (see fig. 1 and col. 2, line 62, to col. 3, line 15).

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Claim 7: Mault's mouthpiece 22 is capable of being designed to be positioned by having the engagement rails 50 and engagement slots 52 on the bottom side of the device 10 instead of the top. This feature does not appear to be a critical part of the Applicant's invention. Additionally, Wright teaches a detachable and symmetrical mouthpiece that is capable of being attached at two different positions that are 180° from each other.

Claim 8: Mault teaches a breath measuring device (see fig. 3), comprising:

a "sensor housing" (reusable portion) 24;

a "holder" (main housing member) 66 connected to the sensor housing 24, the holder 66 having a "receiving portion" (recess) 26; and

a "mouthpiece" (disposable portion with mouthpiece 20) 22 with a "breathing gas passage" (tube) 36 with a "hole" (outlet portion of tube 36) for sampling breathing gas, the mouthpiece 22 including a "portion" with surfaces defining a "trapezoidal cross section" (outer shell) 34, the receiving portion 26 of the holder 66 being "complementary to some of the surfaces defining the trapezoidal cross section for a flush mounting" of the mouthpiece 22 to the holder 66.

According to www.dictionary.com, "trapezoidal" is defined as "adj: resembling a trapezoid" and "trapezoid" is defined as "n: A quadrilateral having two parallel sides".

As can be seen in Figures 3 and 8, the cross sectional shape of the disposable portion 22 resembles a trapezoid.

Mault does not teach a "breath alcohol measuring device" and a sensor housing 24 with a "suction channel". However, Wright teaches a "breath alcohol measuring device" (see fig. 1), comprising: a "mouthpiece" (replaceable plastics breathing tube) 12 (see col. 2, lines 40-41); and a "sensor housing" (case) 10 with a "suction channel" (sampling tube for drawing a sample of breath from the tube 12) 11 (see col. 2, lines 39-45). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Mault's device to be used as a breath alcohol measuring device because Mault discloses that the "present invention may include other sensors or physiological monitors" (see Mault, col. 32, lines 30-31), therefore suggesting that the Mault device is capable of sensing alcohol in breath.

Claim 9: Mault teaches the trapezoidal cross section 34 of mouthpiece 22 is "equilateral" (see fig. 3) as stated above in the rejection of claim 2. Mault does not teach the hole (outlet portion of tube 36) for taking a breath sample is located in a shorter of two parallel sides of the cross section (top and bottom sides of the cross section of outer shell 34) of the mouthpiece 22. However, Wright teaches a "hole" 13 for taking a breath sample (see fig. 1) is located in a bottom side of the cross section of the replaceable mouthpiece 12. The bottom side of Wright corresponds to the bottom side of the cross section of Mault's outer shell 34. Therefore, it would have been obvious for one of ordinary skill in the art to modify the structure of Mault's device to incorporate an outlet hole in the bottom side of the cross section of outer shell 34 because Mault suggests the orientation of the mouthpiece 22 (as shown in Figure 3) could be described in "other positions" (see Mault, col. 4, lines 35-45).

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Claim 10: Mault teaches device (see figs. 3 and 8) has a recess 26 shaped to hold the mouthpiece having two parallel faces (not labeled).

Claims 11 and 12: Mault teaches a “stop” or a “positioning pin” (engagement rails) 50 (see fig. 3) for positioning the holder in correct alignment.

Claim 13: Mault does not teach an “electrochemical alcohol sensor in flow” and a “pump, wherein the breathing gas is sampled by means of a sampling stroke of said pump, said pump being arranged downstream of said electrochemical alcohol sensor with the breathing gas being drawn through said electrochemical alcohol sensor.”

However, Wright teaches “electrochemical alcohol sensors” (electrodes for indicating the quantity of alcohol per unit volume of the breath sample) 17, 18 (see col. 2, lines 43-52) and a “pump” (movable piston) 30 located downstream of the alcohol sensors 17, 18 and providing suction to sample the breathing gas (see fig. 1 and col. 2, line 62, to col. 3, line 15).

Claim 14: Mault’s mouthpiece 22 is capable of being designed to be positioned by having the engagement rails 50 and engagement slots 52 on the bottom side of the device 10 instead of the top. This feature does not appear to be a critical part of the Applicant’s invention. Additionally, Wright teaches a detachable and symmetrical mouthpiece that is capable of being attached at two different positions that are 180° from each other.

Conclusion

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha
Patent Examiner
GAU 3736
30 August 2005